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No. 87-1917

In the Supreme Court of the United States

OCTOBER TERM, 1988

LOVE BOX COMPANY, INC., PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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TABLE OF AUTHORITIES

Cases: Page

Commissioner v. *Heininger*, 320 U.S. 467 (1943) 5
Coughlin v. *Commissioner*, 203 F.2d 307 (2d Cir. 1953).. 5
Fred W. Amend Co. v. *Commissioner*, 454 F.2d 399 (7th Cir. 1971) 5
Kornhauser v. *United States*, 276 U.S. 145 (1928) 5
Welch v. *Helvering*, 290 U.S. 111 (1933) 5

Statutes:

Internal Revenue Code of 1954 (26 U.S.C.):
§ 162 4
§ 162(a) 1, 3, 5

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Petitioner contends that the court of appeals erred in affirming as not clearly erroneous the Tax Court's finding that petitioner's expenses of sponsoring two "History-Economics-Philosophy" seminars were not deductible as ordinary and necessary business expenses under Section 162(a) of the Internal Revenue Code.[1]

1. Petitioner manufactures and sells boxes and fiberboard and wood products. Robert D. Love, who is petitioner's president, and members of his family own all of petitioner's outstanding stock. Love maintains and advocates various views on economic and social issues; these include a commitment to individual freedom and responsibility, free enterprise, excellence and quality in products and services, thrift, self-reliance, honesty, hard work, and

[1] Unless otherwise noted, all statutory references are to the Internal Revenue Code of 1954 (26 U.S.C.), as amended (the Code).

integrity. Some of petitioner's employees and customers have adopted the same or comparable views. These views are consistently encouraged in petitioner's day-to-day operations, as well as in petitioner's advertising and other public communications. Pet. App. A18-A19.

For many years, petitioner has sponsored seminars presented by well-known scholars. During the years 1978 and 1979, petitioner sponsored two five-day seminars featuring Robert LaFevre (Pet. App. A2, A19). Those two seminars were entitled "History-Economics-Philosophy" seminars, and they included discussion of various historical, economic, and philosophical topics (Exh. 8-H), as well as topics central to Love's philosophical perspective, including individual responsibility, honesty, fairness, the work ethic, and self-discipline (Tr. 77-78, 84-85, 90).

The two LaFevre seminars were open to the public on a word-of-mouth basis (Pet. App. A19). Attendance by petitioner's employees was voluntary (*id.* at A2). Of the 35 persons attending the 1978 seminar, ten were employees of petitioner; of the 28 persons attending the 1979 seminar, six or seven were employees of petitioner (*id.* at A3, A19-A20).[2] The remaining attendees included two customers of petitioner, two prospective customers, various business and personal acquaintances of petitioner's employees and customers, and members of the general public (*id.* at A3, A20).[3] During 1978 and 1979,

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[2] One of the attendees, Tom Hildy, was an employee of the Sooner Box Company, a wholly-owned subsidiary of petitioner that filed separate tax returns (see Tr. 26-27, 86; Exh. 10, at 1; Doc. 10, at 6, 7). Uncertainty over whether to treat Hildy as an employee of petitioner apparently accounts for the discrepancy between the court of appeals and the Tax Court with respect to the number of employees attending the 1979 seminar.

[3] These nonemployee attendees were asked to make a contribution in the amount of $200 to Wichita Collegiate School, a tax-exempt

petitioner had about 600 employees and more than 10,000 customers (*id.* at A19).

In presenting the two LaFevre seminars, petitioner incurred expenses in 1978 and 1979 of approximately $9,000 and $9,500, respectively. Petitioner sought to deduct those expenses pursuant to Section 162(a) of the Internal Revenue Code as "ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." The Commissioner disallowed the deductions, and petitioner sought redetermination of the resulting deficiencies in the Tax Court. Pet. App. A3, A18.

2. The Tax Court upheld the Commissioner's determinations, concluding that petitioner had not met its burden of establishing that the expenses were proximately related to its business (Pet. App. A20-A29). The court rejected petitioner's argument that the expenses were incurred for education to improve its employees' job skills, finding that there was no proximate relationship between the seminars and the job skills required of petitioner's employees (*id.* at A20-A26). The court explained that describing the seminars as useful to the performance of an employee's duties was comparable to stating that good health or a general liberal arts education is useful (*id.* at A26); it found the relationship "too tenuous" (*id.* at A21) to justify a deduction. The court also doubted "that the expenditures in question were reasonable expenditures for education of a general nature provided for a total of only 16 of petitioner's 600 employees," stating that "[t]he same educational messages could have been conveyed to a larger group of petitioner's employees for the same or comparable costs if they were 'necessary' in the sense of sec-

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school. Mr. Love was a principal founder of the school and served as its chairman of the board for more than 20 years. Pet. App. A20.

tion 162(a)" (*id.* at A27). The court also found that the relationship between the nonemployee attendees and petitioner's business was too tenuous to support petitioner's alternative claim that the expenses were incurred for "good will" advertising (*id.* at A27-A28), noting that "[t]he manner of publicizing the seminars and the number of attendees was far too limited to be considered as affecting 'the public' in any reasonable use of the word" (*id.* at A28).

A divided court of appeals affirmed (Pet. App. A1-A16). The majority observed that the question whether the LaFevre seminars were sufficiently related to petitioner's business to warrant the deduction of their costs as business expenses was "primarily factual" and therefore reviewable under the clearly erroneous standard (*id.* at A5). Since petitioner had not "demonstrate[d] that the seminars maintained or improved job skills in its employees that directly contributed to its trade and business" (*id.* at A8), the court of appeals concluded that "the Tax Court's finding that the seminar expenses were too attenuated from [petitioner's] business purpose to be deductible as ordinary and necessary education expenses was not clearly erroneous" (*id.* at A9). The majority also agreed with the Tax Court that petitioner had "failed to meet its burden in showing a direct relationship between the seminar's focus upon individual character development and [petitioner's] solicitation of new customers," and it therefore concluded that the Tax Court's finding that the seminar expenses were not deductible as advertising expenses similarly was not clearly erroneous (*id.* at A10). Judge Baldock dissented, finding that the testimony offered by petitioner's witnesses sufficiently demonstrated that the seminars benefitted the company (*id.* at A11-A16).

3. Petitioner contends that the seminar expenses in question were deductible as ordinary and necessary business expenses under Section 162 of the Code. The

courts below correctly rejected this contention, and the decision of the court of appeals does not conflict with any decision of this Court or of another court of appeals. Indeed, petitioner does not allege a conflict or even assert that the court below relied upon any erroneous principles of law. Rather, petitioner contends only that the court of appeals incorrectly applied settled legal principles to the particular facts of this case. That factbound contention does not warrant review by this Court.

Section 162(a) of the Code allows a deduction for "ordinary and necessary expenses" incurred in carrying on a trade or business. To be deductible under Section 162(a), an expense must have a proximate and direct relationship to the taxpayer's trade or business. See, *e.g.*, *Kornhauser* v. *United States*, 276 U.S. 145, 153 (1928); *Fred W. Amend Co.* v. *Commissioner*, 454 F.2d 399, 402 (7th Cir. 1971); *Coughlin* v. *Commissioner*, 203 F.2d 307, 308-309 (2d Cir. 1953). As the court of appeals observed, the question whether the expenses in issue here are deductible under Section 162(a) "focuses on whether the expenses bear a close enough relationship to [petitioner's] business to say that they are ordinary and necessary" (Pet. App. A6). The determination whether a particular expense constitutes an ordinary and necessary business expense is, in most instances, a question of fact reviewable under the clearly erroneous standard. *Commissioner* v. *Heininger*, 320 U.S. 467, 475 (1943); see also *Welch* v. *Helvering*, 290 U.S. 111, 114-116 (1933).

Petitioner argues that the expenses of the seminars bore the requisite direct relationship to its business for two reasons, viz., that the expenses were incurred to educate its employees (Pet. 8-23) and that the seminar expenses constituted advertising and promotion expenses (*id.* at 23-29). The Tax Court examined both of these theories and concluded that petitioner had not met its burden of

establishing that the expenses were proximately related to its business (Pet. App. A20-A29), and the court of appeals upheld that conclusion as not clearly erroneous. The Tax Court's factual conclusion is supported by the record in this case, which shows that the general nature of the seminar topics bore only an attenuated relationship to the job skills of petitioner's employees, that only a minuscule number of petitioner's employees or customers attended the seminars, and that petitioner made no substantial effort to induce its employees, customers, or members of the public to attend the seminars. In the absence of any claim by petitioner that the courts below applied an incorrect legal standard, there is clearly no basis for review by this Court.[4]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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[4] There is no basis for petitioner's assertion that the decision below "could have far-reaching consequences for American business" (Pet. 8) because it "threatens the deductibility of billions of dollars of educational expenditures by hundreds of companies" (*id.* at 12 (emphasis omitted)). The instant case, like most cases involving the deductibility of claimed business expenses, turns on its own facts. Indeed, while petitioner discusses various employee education programs presented by other companies (*id.* at 14-20), it points to no other companies that sponsor "History-Economics-Philosophy" seminars at which the majority of attendees are neither employees nor customers of the company. Thus, the factbound decision of the court below will not be dispositive of the deductibility of different education programs sponsored by different companies.

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